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LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

This Lease Agreement executed this 13th day of November, 1973, by and between INTERNATIONAL CAR CO., a division of INTERNATIONAL RAMCO, INC., an Illinois corporation (hereinafter called "Lessor" or "Car Company"), and TEXAS AND PACIFIC RAILWAY COMPANY, a corporation created and existing under and by virtue of Acts of Congress of the United States of America (hereinafter called "Lessee"), and MISSOURI PACIFIC RAILROAD COMPANY, a Missouri corporation (hereinafter called "Missouri Pacific"),

W I T N E S S E T H:

WHEREAS, Car Company is completing the manufacture of and owns 30 all steel platform type caboose cars with extra-wide vision cupola and cushion underframe manufactured to Missouri Pacific's Specification FC-1-74, revised May 31, 1973, and Lessor's Specification 421 (sometimes hereafter collectively referred to as "cars" and, individually, as "car") to be numbered TP 13605-13634; and

WHEREAS, Lessor will on the effective date let to the Lessee and Lessee will on the effective date rent from Car Company all of said cars upon the terms and conditions hereafter specified; and

WHEREAS, as an inducement to and in consideration of the lease by Lessor to Lessee of the cars, Missouri Pacific has agreed to guarantee the obligations of Lessee, and further, has agreed to purchase said cars at the expiration of this Lease.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

1. The term of the Lease with respect to each car subject hereto shall commence on the effective date hereof (to-wit: November 15th, 1973) and shall terminate on January 2, 1974.

2. The Lessee shall pay as fixed rent to Car Company for the use of each such car which becomes subject to the operation and terms hereof, during the full term of the Lease therefor, the sum of \$1.00. Said fixed rental shall be payable by the Lessee to Lessor concurrently with the execution of this Lease. Payment of any additional amounts required by Section 4 hereof shall be made at such place only to the extent such payments are not being, or have not been made by the Lessee directly and are instead being paid to the Lessor by way of reimbursement for, or to provide the Lessor with the funds necessary to pay the amounts required by said Section 4. All

rents and other sums payable to the Lessor shall be paid in funds current in the United States.

3. Upon paying the rent and performing and observing all of the terms and conditions on its part to be performed and observed, the Lessee, subject to the terms hereof, shall have exclusive use, custody and control of each car leased hereunder during the term of this Lease therefor or any extension thereof without disturbance from the Lessor or anyone claiming by, through or under the Lessor, including the use thereof on its own lines and railroad and upon other railroads in the usual interchange of traffic. The Lessee may receive such compensation for such use from any corporation so using the cars as the Lessee may determine, provided, however, that the right of such use shall be subject to all of the terms and conditions of this agreement.

4. In addition to the fixed rents payable by the Lessee under the provisions of Section 2 above:

(a) Taxes: The Lessee agrees to pay any and all sales, use, excise, personal property and other ad valorem taxes, assessments and other governmental charges whatsoever by whomsoever payable on or relating to the cars leased hereunder, or use thereof, or earnings arising therefrom or any portion thereof, including all such taxes, fees, assessments and charges upon the Lessor by reason of the ownership, use, rental, shipment, transportation, delivery or operation of the cars leased hereunder, but the Lessee shall not be obligated to pay any federal or state income taxes, or any other tax imposed on earnings of Car Company measured by rents payable hereunder or the net income therefrom; provided, however, the Lessee agrees to pay any such tax on or measured by rents payable hereunder or net income therefrom which is in substitution for, or relieves the Lessee from, a tax on the cars which the Lessee would otherwise be obligated to pay under the terms of this Section. The Lessee agrees to promptly file for the Lessor all ad valorem tax returns on the cars. Any statements for such taxes received by the Lessor shall be promptly forwarded to the Lessee by the Lessor. The Lessee shall not be obligated to pay any amount under this Section 4 so long as it shall in good faith and by appropriate proceedings contest the validity or the amount thereof unless thereby any cars would be subjected to forfeiture or sale.

(b) Maintenance and Servicing: The cars leased hereunder have been selected by the Lessee and the Lessee acknowledges and agrees that Lessor has and will have no responsibility in connection with the time of delivery, or condition,

nature, installation or operation of cars, initially or otherwise. The Lessee shall give said cars the same care and attention as it gives its own cars and maintain and keep (under A.A.R. Rules) all of said cars in good order and complete repair and working condition, and satisfactory for interchange in accordance with said Association of American Railroad Rules, all at its own cost and expense, said repairs and maintenance to be done to the satisfaction of the agent or inspector of Lessor. The Lessee agrees to pay for any cost, expense, fee or charge incurred in connection with such repairs, installation or maintenance as are specified above, or storage and servicing, if required, and Lessee shall arrange, at its own expense, for the listing of cars covered by this Lease in the Official Railway Equipment Register. In the event a car leased hereunder requires extensive repairs, as defined in A.A.R. Rule 120, the Lessee will abide by the requirement of said rule and such repairs shall be the Lessee's responsibility and not Lessor's.

(c) Documentary Taxes: The Lessee agrees to pay all stamp or documentary taxes, state or federal, levied or assessed on this Lease, or any Lease supplemental hereto or an extension hereof.

5. During the term of this Lease, the Lessee shall:

(i) Use the cars in a careful and prudent manner;

(ii) Cause each side of each car to be plainly, distinctly, permanently and conspicuously stencilled with the following legend in letters not less than one inch in height:

"PROPERTY OF INTERNATIONAL RAMCO, INC.,  
OWNER AND LESSOR"

and will immediately replace any such stencilling which may be removed, destroyed or become illegible, wholly or in part, the stencil to be used to be furnished by Lessee at its own cost and expense; or cause each side of each car to be plainly, distinctly, permanently and conspicuously marked with metal plates (to be furnished by Lessor) carrying the legend specified above (with or without reference to a mortgage) in letters not less than one inch in height, and Lessee will immediately replace any such plate which may be removed, destroyed or become illegible, wholly or in part, any such duplicates to be furnished by Lessor at its own cost and expense; or should changes or additions be required in the foregoing legend, Lessee shall make such changes or

additions, and the expense thereof shall be borne by the Lessor;

(iii) Comply with all laws and regulations of any governmental authority with reference to the manner of using or operating the cars, including, without limiting the generality of the foregoing, posting of all such bonds as may be required by applicable law or regulation as a condition to the use or operation of any car or equipment therein;

(iv) Keep the cars free from any lien, charge, claim or encumbrance which may be a cloud upon or otherwise affect Lessor's title, provided, the Lessee may in good faith contest in any reasonable manner the validity or application of any such lien, claim, charge or encumbrance to the extent such contest does not adversely affect the title of Lessor to the cars or result in forfeiture or sale of any of the same;

(v) Indemnify (and the Lessee does hereby indemnify) and save Lessor, its agents, servants and any assigns of Lessor harmless from and against any and all loss, damage, injury, claim, demand or expense, including legal expense, of whatsoever kind and nature arising on account of the use (including by reason of the use or incorporation of any invention in any car or equipment therein or infringement of patents), conditions (including without limitation latent and other defects and whether or not discoverable by Lessor) or operation of any car or any part thereof, and by whomsoever used or operated during the term hereof in respect of any such car; provided, the Lessee shall not be required to pay or discharge any claim or demand referred to in this Section so long as the validity or amount thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not adversely affect title of the Lessor to the cars or any of them, or part thereof, or result in forfeiture or sale of the same. The indemnities and assumptions of liability in this Section contained shall continue in full force and effect notwithstanding the termination of this Lease, or termination of the term hereof in respect of any one or more cars, whether by expiration of time, by operation of law or otherwise. The Lessor shall give the Lessee prompt notice of any claim hereby indemnified against, and the Lessee shall be entitled to control the defense thereof;

(vi) Except for numbering and stencilling as provided in subparagraph (ii) above, to keep the cars free from any

marking or labelling which might be interpreted as a claim of ownership thereof by the Lessee or any other person, association or corporation other than the Lessor and will not change, or permit to be changed, the identifying road numbers on any of the cars;

(vii) Allow Lessor, at its own cost and expense, to inspect the cars at any reasonable time or times whether on the road of the Lessee or elsewhere.

6. Loss, Irreparable Damage or Destruction:

(a) In the event of the loss, destruction or irreparable damage to any car leased hereunder from any cause or casualty of any nature whatsoever during the continuance of this Lease, the Lessee shall promptly and fully inform the Lessor in regard to such loss, destruction or irreparable damage, and shall promptly pay to Lessor the sum of \$31,526.84 as the full value thereof. Upon payment of such sum, the lease term with respect to such car shall terminate.

7. Purchase of Cars Upon Expiration of Lease. Upon the expiration of the term of this Lease, Lessee does hereby agree, pursuant to its purchase order dated June 11, 1973, to purchase from Lessor all of the cars for a purchase price of \$31,526.84 each, or a total of \$945,805.20, plus applicable taxes, if any, to be paid in cash on the expiration date of the Lease, and the Lessor shall execute and deliver a Bill of Sale assigning and transferring to the Lessee or the purchaser named by the Lessee the absolute title to said cars, as it may deem advisable, or to perfect any equipment trust agreement or other financing arrangements respecting the cars to be purchased. Such assignment shall not postpone the performance of the payment of the purchase price thereof (except as provided in this Section, nor shall it operate to release Lessee from any of its obligations to purchase and pay for said cars upon expiration of this Lease. In the event Lessee elects to finance all or a part of the purchase price of the cars through a conditional sales agreement (with an accompanying assignment of the Lessor's right as builder to a bank or investor) Lessor agrees to cooperate in the execution and delivery of such documents, in mutually satisfactory form, and in the execution and delivery of customarily related documents. Lessor recognizes that the processing of invoices and accompanying papers in connection with any such financing may ordinarily delay the date of payment therefor beyond the date of expiration of the Lease. Lessee covenants and agrees to exert reasonable diligence

to prevent unnecessary delay in processing and payment of the purchase price for the cars which, in no event, shall be paid for later than January 15, 1974.

8. Assignments by the Lessor. The Lessor may at any time and from time to time assign this Lease and/or the rents and/or the sale proceeds and other sums at any time due and to become due, or at any time owing or payable, by the Lessee or by Missouri Pacific (as the case may be) to the Lessor under any of the provisions of this Lease. Upon any such assignment, the Lessor shall give written notice to the Lessee and/or Missouri Pacific (as the case may be) stating the name and post office address of the assignee and all rents, purchase proceeds, or other sums payable by the Lessee which are the subject matter of such assignment shall be paid to such assignee. No such assignee shall be bound by or obligated to perform or see to the performance of any duty, covenant or condition or warranty (express or implied) made by the Lessor, required to be observed or performed by the Lessor under any of the terms hereof but on the contrary, the Lessee and Missouri Pacific by their execution hereof acknowledge and agree that, notwithstanding any such assignment, each and all of such covenants and agreements of the Lessor and all representations and warranties shall survive any such assignment and shall be and remain the sole liability of Lessor and of every person, firm or corporation succeeding (by merger, consolidation, purchase of assets or otherwise) to all or substantially all of the business, assets or good will of Lessor.

9. Accessions and Replacements. Any and all replacements of any parts of said cars and all additions thereto shall constitute accessions to the cars and be subject to all the terms and conditions of this agreement and be included in the term "cars" as used in this agreement.

10. Surrender. At the expiration or termination of this Lease in respect of any car, whether by passage of time or otherwise, the Lessee will surrender and return possession of such car to the Lessor or as Lessor shall direct to Lessee, at such point on the line of the Lessee as Lessor may direct, in condition satisfactory for interchange service under Association of American Railroads Rules. If any of the cars are away from the line of the Lessee on the date of the expiration of this Lease with respect to any such car, the obligations of the Lessee hereunder as to such car shall continue until such car is surrendered as herein provided.

11. Defaults. In the event that

(a) Lessee shall default in the payment of any installment of rent (including as rent within the

meaning of this paragraph the sums payable by Lessee under Section 4 hereof) and such default shall continue for more than five (5) days after written notice thereof to the Lessor; or

(b) Lessee shall default in the observance or performance of any other covenant required to be observed or performed by the Lessee hereunder and such default shall continue for more than thirty (30) days after notice thereof to the Lessee by the Lessor; or

(c) There shall be the appointment of a permanent receiver or trustee in bankruptcy for the Lessee or for any of its property and the receiver or trustee shall fail or omit to adopt and assume and agree to perform all of the obligations of the Lessee hereunder in accordance with all of the terms hereof within thirty (30) days after such appointment;

then, in any such case (herein sometimes called "events of default"), the Lessor at its option may:

A. Proceed by appropriate court action or actions, either at law or in equity to enforce performance by the Lessee of the applicable covenants and terms of the Lease or to recover damages for the breach thereof; or

B. Directly, or by its agents, enter upon the premises of the Lessee or other premises where cars may be located and take possession thereof (any damages occasioned by such taking of possession being hereby expressly waived by the Lessee) and, at the election of Lessor, declare the Lease terminated, whereupon all right, title and interest of the Lessee to, or in the use of the cars shall absolutely cease and determine excepting only the obligation of the Lessee to pay accrued rentals, if any, to the date of re-taking.

In addition to the foregoing, the Lessor shall be entitled to recover from the Lessee any and all damages which the Lessor shall sustain by reason of the breach by the Lessee of any of the covenants and terms of this Lease, together with a reasonable sum for attorneys' fees and such expenses as shall be expended or incurred in the seizure of the cars or any of them, or in the enforcement of any right or privilege hereunder, or in any consultation or action in such connection.

The remedies herein provided in favor of the Lessor in the event of default as hereinabove set forth shall not be

deemed to be exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing in law, in equity or in bankruptcy.

12. Guaranty. Missouri Pacific does hereby guarantee to Lessor the payment of all rental and other sums by Lessee and the performance of all obligations of Lessee under the terms of this Lease.

13. Authority. The Lessee and Missouri Pacific represent that each of them has full right and lawful authority to enter into this Lease and purchase agreement and in doing so violate no existing agreement or indenture to which either of them is a party, or any provisions of their respective charters, by-laws or other governing or enabling documents or regulations. Lessee and Missouri Pacific agree they will, at the request of Lessor, deliver to Lessor or any assignee of Lessor appropriate certified corporate resolutions and an opinion of counsel in form and substance reasonably satisfactory to counsel for Lessor covering such matters pertaining to the aforesaid right and authority and to the validity and enforceability hereof.

14. Notices. Any notices provided for in this Lease shall be in writing and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, registered, postage prepaid, addressed as follows:

If to the Lessor at: P.O. Box 222  
Kenton, Ohio 43326

If to the Lessee 210 North 13th Street  
and/or Missouri St. Louis, Missouri 63103  
Pacific, at:

or at such other place as any party may designate to the others by notice given in accordance with this Section.

This Lease shall be binding upon and shall inure to the benefit of the Lessor, Lessee and Missouri Pacific and their respective successors and assigns, including each and every assignee referred to in Section 8 hereof.

15. Counterparts and Filings. This Lease may be executed in any number of counterparts, each counterpart constituting an original but all together one and the same instrument and contract. The Lessee agrees it will, from time to time, do and perform any other acts, and execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Lessor for the purpose of protecting its title and rights or for the



purpose of carrying out the intent of this agreement, and the Lessee will promptly furnish to the Lessor certificates or other evidences of all such filing, registering and recording in form satisfactory to the Lessor, including, without limiting the generality of the foregoing, the recording or filing of this instrument, or copy thereof, or financing statement or memorandum in connection therewith in any public office of the United States or of any state or of any political or governmental subdivision of any state.

16. Miscellaneous. All oral negotiations are merged herein. There are no oral covenants or agreements made by either party hereto except as reduced to writing herein. This Lease may not be terminated, modified or amended, nor shall any waiver of any provision herein be deemed to have occurred regardless of the action or non-action of the Lessor in connection therewith except upon the written agreement of the parties hereto. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Ohio, in which state it shall be deemed to have been executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed by their duly authorized officers and their corporate seals to be hereunto affixed, all as of the day and year first above written.

MISSOURI PACIFIC  
RAILROAD COMPANY

By *Am. Hoggmink*  
Vice President

ATTEST:

*J. B. Stalinger*  
Assistant Secretary

THE TEXAS AND PACIFIC RAILWAY COMPANY

By *Am. Hoggmink*  
Vice President

ATTEST:

*J. B. Stalinger*  
Assistant Secretary  
LESSEE

INTERNATIONAL CAR CO., division of  
INTERNATIONAL RAMCO, INC.

By *James C. Ross*  
Vice President

ATTEST:

*Leighton E. Weber*  
Assistant Secretary  
LESSOR

STATE OF MISSOURI     )  
                              ) SS  
CITY OF ST. LOUIS     )

On this 13<sup>th</sup> day of November, 1973, before me personally appeared H. M. Hoffmeister, to me personally known, who, being by me duly sworn, says that he is Vice President of The Texas and Pacific Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Victor N. Burns  
Notary Public

My Commission expires:

*My Commission Expires March 22, 1977*

STATE OF MISSOURI     )  
                              ) SS  
CITY OF ST. LOUIS     )

On this 13<sup>th</sup> day of November, 1973, before me personally appeared H. M. Hoffmeister, to me personally known, who, being by me duly sworn, says that he is Vice President of Missouri Pacific Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Victor N. Burns  
Notary Public

My Commission expires:

STATE OF *Ohio* )  
 ) SS  
COUNTY OF *Hardin* )

On this *19th* day of November, 1973 before me personally appeared *James V. Ross*, to me personally known, who, being by me duly sworn, says that he is *Vice President* of International Car Co., division of International Ramco, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Robert M. Gordon*  
Notary Public.

My Commission expires:

**ROBERT M. GORDON**

NOTARY PUBLIC, HARDIN CO., OHIO

My Commission Expires May 3, 1977